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Finance Committee

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Possibility, from a legal perspective, of considering advances from the Endowment Fund for Marine Scientific Research in the Area to the Voluntary Trust Fund to be grants

Report of the Secretary-General

I. Introduction

1. At its nineteenth, twentieth and twenty-first sessions, the Finance Committee requested the Secretary-General to prepare a report on the possibility, from a legal perspective, of considering advances from the Endowment Fund for Marine Scientific Research in the Area to the Voluntary Trust Fund to be grants.[1] The present report has been prepared in response to those requests.

II. Voluntary Trust Fund

2. The Voluntary Trust Fund was established in 2002.[2] Its primary purpose is to enhance the participation of members from developing countries in the meetings of the Legal and Technical Commission and the Finance Committee. It is funded by voluntary contributions from members of the Authority and others. Provisional terms and conditions for the use of the Fund were adopted by the Assembly, on the recommendation of the Committee, in 2003.[3]

III. Transfers from the Pioneer Fund to the Voluntary Trust Fund

3. To assist the Voluntary Trust Fund in its first year of operation and to supplement voluntary contributions, the Assembly, in 2003, authorized the Secretary-General, on an exceptional, one-time basis, to advance, to the extent

[1] See ISBA/19/A/7-ISBA/19/C/11, para. 16; ISBA/20/A/5-ISBA/20/C/19, para. 17; and ISBA/21/A/6-ISBA/21/C/15, para. 19.
[2] See ISBA/8/A/11, para. 12, and ISBA/12/FC/L.1, para. 11.
[3] See ISBA/9/A/5-ISBA/9/C/5, annex.

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necessary, up to $75,000 from extraordinary sources of funding under the custody of the Secretary-General and accrued to the Authority.[4] The sources of funding were an amount of $2,766,803, representing the balance of the application fees paid by registered pioneer investors under resolution II of the Third United Nations Conference on the Law of the Sea and previously held under the custody of the United Nations (the Pioneer Fund). The records show that an amount of $75,000 was advanced in 2003.

4. In 2004, the Secretary-General was authorized by the Assembly, on the recommendation of the Finance Committee, to make a further advance, to the extent necessary, of up to $10,000 to the Voluntary Trust Fund from interest on the Pioneer Fund.[5] There is no record that such an advance was made.

5. In 2005, the Assembly, on the recommendation of the Finance Committee, authorized the Secretary-General to make a third advance, to the extent necessary, of up to $60,000 for the operation of the Voluntary Trust Fund from interest on the Pioneer Fund.[6] The advance was made.

6. In 2006, the Finance Committee, noting the residual balance of the Voluntary Trust Fund, inclusive of the most recent advance of $60,000 from the Pioneer Fund, decided not to recommend any further advances to the Voluntary Trust Fund for 2007.[7]

7. The total amount advanced from the Pioneer Fund to the Voluntary Trust Fund between 2003 and 2006 was $135,000 (see annex).

8. In 2007, the Assembly, on the recommendation of the Finance Committee, decided that the amount of $135,000 advanced to the Voluntary Trust Fund from the Pioneer Fund should be considered to be a contribution to the Voluntary Trust Fund.[8]

IV. Endowment Fund for Marine Scientific Research in the Area

9. The Endowment Fund for Marine Scientific Research in the Area was established in 2006,[9] with a view to implementing article 143 (2) of the United Nations Convention on the Law of the Sea, which provides that the Authority is to promote and encourage the conduct of marine scientific research in the Area. In its decision establishing the Fund, the Assembly indicated that the purposes of the Fund were to promote and encourage the conduct of marine scientific research in the Area for the benefit of mankind as a whole, in particular by supporting the participation of qualified scientists and technical personnel from developing countries in marine scientific research programmes and by providing them with opportunities to participate in international technical and scientific cooperation, including through training, technical assistance and scientific cooperation programmes.

[4] See ibid., para. 6 and annex, and ISBA/9/A/9, para. 14.
[5] See ISBA/10/A/6-ISBA/10/C/7, para. 11, and ISBA/10/A/8, para. 9.
[6] See ISBA/11/A/8-ISBA/11/C/9, para. 10, and ISBA/11/A/11, para. 19.
[7] See ISBA/12/A/7-ISBA/12/C/9, para. 9.
[8] See ISBA/13/A/3-ISBA/13/C/5, para. 7, and ISBA/13/A/7, para. 41.
[9] See ISBA/12/A/11.

10. The Endowment Fund was established with an initial capital of $2,631,803, representing the balance remaining in the Pioneer Fund as at 18 August 2006 after the advances totalling $135,000 had been made to the Voluntary Trust Fund.

11. Although the primary purpose of the Endowment Fund is to promote marine scientific research, the Assembly decided in paragraph 7 of its decision that, on the recommendation of the Finance Committee and the Council, it might decide in any year to allocate, where possible and to the extent necessary, up to $60,000 from the income of the Fund to supplement the Voluntary Trust Fund.

12. In paragraphs 8 and 9 of its decision, the Assembly requested the Secretary-General to prepare rules and procedures for the administration and utilization of the Endowment Fund and decided that, pending their approval, the income of the Fund was not to be utilized except in accordance with a decision of the Assembly pursuant to paragraph 7 of the decision.

13. In 2007, the Assembly adopted definitive terms of reference, guidelines and procedures for the Endowment Fund.[10] They made no reference to any further allocation of funds from the Endowment Fund to the Voluntary Trust Fund.

V. Transfer of funds from the Endowment Fund to the Voluntary Trust Fund

14. Notwithstanding its decision in 2007 regarding the treatment of the $135,000 advanced from the Pioneer Fund to the Voluntary Trust Fund (see para. 8), in 2008 the Assembly authorized the Secretary-General to transfer up to $60,000 from the interest accrued from the Endowment Fund to supplement the Voluntary Trust Fund in 2009 and eventually to return the advance of $135,000 made by the Pioneer Fund to the Endowment Fund.[11]

15. Pursuant to that decision, an amount of $20,000 was transferred by the Secretary-General from the Endowment Fund to the Voluntary Trust Fund in December 2008.

16. In 2009, the Finance Committee noted that it had approved the transfer of $60,000 from the Endowment Fund to the Voluntary Trust Fund in 2008 and recommended that, in view of a new contribution to the Voluntary Trust Fund by Norway, the Secretary-General should suspend the transfer of the balance of $40,000 until it became necessary.[12] In 2010, the Committee again noted that it had approved that transfer and made the same recommendatio.[13] Nevertheless, a transfer of $40,000 was made in January 2011.

17. In 2011, the Assembly, on the recommendation of the Finance Committee, authorized the Secretary-General, to the extent necessary and on an exceptional basis, to make an advance of up to $30,000 from the interest accrued on the Endowment Fund to supplement the Voluntary Trust Fund.[14] The decision was not

[10] See ISBA/13/A/6.
[11] See ISBA/14/A/8, para. 8.
[12] See ISBA/15/A/5-ISBA/C/6, para. 8.
[13] See ISBA/16/A/5-ISBA/16/C/8, para. 16.
[14] See ISBA/17/A/3-ISBA/17/C/3, para. 6, and ISBA/17/A/5, para. 9.

implemented, however, because it did not become necessary to supplement the Voluntary Trust Fund.

18. The annex to the present report shows the total amounts transferred from the Endowment Fund to the Voluntary Trust Fund to date.

VI. Advances as grants

19. The Finance Committee has asked whether the cumulative advances of $60,000 made from the Endowment Fund to the Voluntary Trust Fund may be considered to be grants. As may be noted from the foregoing, the allocations of moneys from the Endowment Fund made on the recommendation of the Committee were never referred to as "advances". Rather, they were authorized and approved on the basis that they were "allocations" from the accrued interest on the Endowment Fund, made on an exceptional basis, in line with the language in the decision establishing the Endowment Fund in 2006.[15] In simple accounting terms, an allocation is an authorization to incur expense or obligation up to a specified amount, for a specific purpose, and within a specific period. A grant can simply be defined as an amount of money, given to a person or organization, for a specific purpose. Under those definitions, in the absence of a clear stipulation to the contrary, an allocation or a grant would imply that there are no expectations that the amounts concerned are to be repaid. There are, therefore, no advances to be recovered from the Voluntary Trust Fund.

20. There remains, however, an added complication as a result of the contradictory decisions of the Assembly relating to the disposition of advances totalling $135,000 made from the Pioneer Fund to the Voluntary Trust Fund before the establishment of the Endowment Fund. The amounts were consistently referred to as "advances". As noted above, in 2008 the Assembly directed the Secretary-General eventually to return the advance of $135,000 made by the Pioneer Fund to the Endowment Fund.

21. Earlier, however, the Assembly had already decided, on the recommendation of the Finance Committee, that the amount of $135,000 that had been advanced to the Voluntary Trust Fund from the Pioneer Fund should be considered to be a contribution.[16] It is not possible, on the basis of the documentation available, to reconcile those decisions. Nevertheless, the sequence of events dictates that the Assembly's decision of 2007 to account for that amount as a contribution was implemented and, therefore, the subsequent decision of 2008 may be regarded as anomalous, given that, by that time, there were no longer any moneys to be returned, the grant having been absorbed into the Voluntary Trust Fund.

VII. Recommendation

22. Given that it would appear that there is no outstanding matter on which the Finance Committee is required to make a decision, the Committee is invited to take note of the present report.

[15] See ISBA/12/A/11, para. 7.
[16] See ISBA/13/A/7, para. 41.

Annex

Funds transferred to the Voluntary Trust Fund from the Pioneer Fund and the Endowment Fund

(United States dollars)

Month and year	*Source*	*Amount*
December 2003	Pioneer Fund	75 000
June 2006	Pioneer Fund	60 000
Subtotal		**135 000**
December 2008	Endowment Fund	20 000
January 2011	Endowment Fund	40 000
Subtotal		**60 000**
Total		**195 000**